

REMARKS

In the decision by the Board of Patent Appeals and Interferences dated May 1, 2009, the Board affirmed the rejection of claims 32, 34, 39, 41, 42, 45 and 55-60 under 35 U.S.C. §103(a) based on the combination of Fahim and Wider, the rejection of claim 46 under 35 U.S.C. §103(a) based on the combination of Fahim, Wider and Remington's Pharmaceutical Sciences and the rejection of claim 47 under 35 U.S.C. §103(a) based on the combination of Fahim, Wider and Root. The Board reversed the rejection of claims 32, 34, 37, 41, 42, 45 and 55-60 under 35 U.S.C. §103(a) based on the combination Kurginski, Fahim and Root. In reversing the rejection, the Board stated on page 16 of the decision: "In sum, claim 37 is without rejection."

Claim 37 is a multiple dependent claim depending from independent claims 32, 56 and 57 and reading as follows:

**37. A composition of any of claims 32, 56 or 57, wherein
the solution comprises less than 10% (v/v) ethanol and water.**

Although applicants do not necessarily agree with the affirmation of the noted rejections and applicants reserve the right to further pursue the subject matter of such claims or claims relating to other subject matter supported by the disclosure, applicants have amended each of independent claims 32, 56 and 57 to include the subject matter of claim 37. Such claims accordingly now recite the presence of ethanol, in an amount that is less than the defined amount. In addition, claims 37 and 55 have been canceled and claims 34, 41, 42 and 58 have been amended to remove the dependency from now-canceled claim 55.


The Examiner is respectfully requested to consider the instant Amendment and to allow the application. In this regard, applicants respectfully note that the

instant Amendment is to enable the Examiner to allow the application without having to communicate further with applicants in order to place the claims in independent form as provided for in MPEP §1214.06 II.

If there are any questions concerning this response, or the application in general, the Examiner is respectfully requested to telephone the undersigned attorney at the number provided below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: 
Robert G. Mukai
Registration No. 28,531

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

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